UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-4296-JRT-JFD

JOSE MARIO R. S.,

Petitioner,

v.

PAMELA BONDI, et. al.,

Respondents.

CONSOLIDATED RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Jose Mario R.S. ("Petitioner") filed this petition for a writ of habeas corpus because he wants an immigration court to conduct a bond hearing in connection with his detention by the U.S. Immigration and Customs Enforcement ("ICE"). Petitioner also filed a motion for a temporary restraining order, asking the Court to block his transfer out of Minnesota and order an immediate bond hearing. ECF 4, 5. Respondents Pamela Bondi, Kristi Noem, the Department of Homeland Security ("DHS"), Todd M. Lyons, ICE, Darren K. Margolin, Executive Office for Immigration Review ("EOIR"), and Samuel Olson[1] hereby respond to the petition and Motion for Temporary Restraining Order.

This Court should dismiss the petition for lack of jurisdiction, because Congress has not empowered federal district courts to address the issues that he raises. On the merits, Petitioner is not entitled to habeas relief because his detention is mandatory—he is not eligible for bond or a bond hearing.

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[1] Peter Berg has retired. Samuel Olson, Field office Director for ICE's St. Paul Field Office, should be substituted automatically as his successor in interest under Fed. R. Civ. P. 25(d).

BACKGROUND

Respondents draw the following background from the petition, the Declaration of John D. Ligon ("Ligon Decl."), and the accompanying exhibits.

I. Factual and Procedural Background

Petitioner is a native and citizen of Mexico. ECF 1 ¶ 32; Ligon Decl. ¶ 4. He entered the United States without inspection, admission, or parole. Ligon Decl. ¶ 4; ECF 1 ¶ 34. Petitioner contends that he entered in 1999 and left in 2002 and then re-entered in February of 2004. ECF 1 ¶ 33.

On October 18, 2025, officers from ICE's Enforcement and Removal Operations ("ERO") encountered Petitioner and arrested him. Ligon Decl. ¶ 5. ERO transferred Petitioner to ERO St. Paul for processing on October 19, 2025. Ligon Decl. ¶ 6.

ICE issued Petitioner a Notice to Appear the same day. Ligon Decl. ¶ 7, Ex. B. The Notice to Appear charged Petitioner with removability under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (which is codified at 8 U.S.C. § 1182(a)(6)(A)(i)) and 212(a)(7)(A)(i)(I) (codified at 8 U.S.C. § 1182(a)(7)(A)(i)(I)). *Id.*

Petitioner has a hearing in immigration court on December 3, 2025. Ligon Decl. ¶ 8.

II. Legal Background

For more than a century, this country's immigration laws have authorized immigration officials to charge noncitizens[2] as removable from the country, arrest those

[2] The statutory term "alien" means any person not a citizen or national of the United States. 8 USC § 1101(a)(3). Respondents use the term "noncitizen" as the equivalent of the statutory term "alien." *See Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020).

subject to removal, and detain them during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). "The rule has been clear for decades: '[d]etention during deportation proceedings [i]s . . . constitutionally valid.'" *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)), *rehearing by panel and en banc denied*, 2025 WL 837914 (8th Cir. Mar. 18, 2025); *see also Demore*, 538 U.S. at 523 n.7 ("In fact, prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."). Indeed, removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

All of this explains why Congress enacted a multi-layered statutory framework for detaining noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. This case challenges which of two statutes governs Petitioner's detention: § 1225 or § 1226.

A. Detention under § 1225

Section 1225 governs inspection, the initial step in deciding who can enter the country and who can stay after entering. The statute states that all noncitizen "who are applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). And Congress specifically chose to deem any noncitizen "present in the United States who has not been admitted or who arrives in the United States" as an

"applicant for admission" for purposes of 8 U.S.C. ch. 12. *Id.* § 1225(a)(1). Petitioner satisfies this definition and is therefore treated as an "applicant for admission" regardless of whether he wants to pursue legal status in the United States.

Section 1225 sets out the inspection procedures applicable to applicants for admission. Individuals "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Subsection (b)(1) applies to those "arriving in the United States" and "certain other"[3] noncitizens "initially determined to be inadmissible because of fraud, misrepresentation, or lack of valid documentation." Noncitizens falling under this provision are generally subject to expedited removal proceedings "without further hearing or review." *See* 8 U.S.C. § 1225(b)(1)(A)(i). But where the applicant "indicates an intention to apply for asylum . . . or a fear of persecution," then immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If he or she does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he or she is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

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[3] The "certain other" noncitizens referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)'s expedited procedures to a noncitizen who "has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that [he or she] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of years.

Subsection (b)(2) is broader, serving as a catchall provision for applicants who are not covered by § 1225(b)(1). Petitioner falls into this category: he is an applicant for admission, but he is not covered under (b)(1) because he is not "arriving" in the United States—he has been here for decades. Subject to exceptions not applicable in this case, "if the examining immigration officer determines that [the noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall* be detained for a removal proceeding." *Id.* § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("[F]or [noncitizens] arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'" (citing *Jennings*, 583 U.S. at 299)). DHS retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Detention under § 1226

Section 1226 covers a different immigration process: arrest and detention of noncitizens pending removal. The statute provides that a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). For noncitizens arrested under § 1226(a), the Attorney General and DHS have broad discretionary authority to detain a noncitizen during removal

proceedings.[4] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" noncitizen during the pendency of removal proceedings).

When a noncitizen is apprehended, a DHS officer makes an initial discretionary determination concerning release. 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the" noncitizen. 8 U.S.C. § 1226(a)(1). "To secure release, the [noncitizen] must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS releases the noncitizen, then the agency may set a bond or condition for release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, then the noncitizen can request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge conducts a bond hearing and decides whether release is warranted, based on a variety of factors that account for his ties to the United States and the possible risks of flight or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (identifying nine non-exhaustive factors);

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[4] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Tellingly, none of the § 1226 detention procedures occurred in Petitioner's case. No DHS officer made an initial discretionary decision, Petitioner did not request a bond, and no immigration judge conducted a bond hearing. In other words, everyone—including Petitioner—understands that he is being detained pursuant to § 1225 rather than § 1226. *See, e.g.* Pet. ¶ 24 (affirmatively alleging that "ICE asserts authority to detain [Petitioner] pursuant to the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A).")

ARGUMENT

The parties' disagreement in this case comes down to whether Petitioner is detained pursuant to § 1225 or § 1226. ICE says it's § 1225, which governs the detention of noncitizens who are "applicants for admission." 8 U.S.C. § 1225(a)(3). Congress says so as well, expressly directing that noncitizens like Petitioner who get into the United States without being inspected "shall be deemed for purposes of this chapter an applicant for admission" and then detained pursuant to § 1225(b)(1) or § 1225(b)(2) *Id.* § 1225(a)(1). Under a straightforward reading of the statute, Petitioner is subject to mandatory detention under § 1225(b)(2). He is not entitled to a bond hearing, and the Court should deny his habeas petition.[5]

[5] The United States recognizes that this case raises nearly identical issues to those addressed by this Court in *Avila v. Bondi*, No. 25-cv-3741 (JRT/SGE), 2025 WL 2976539, at *1 (D. Minn. Oct. 21, 2025). That decision is on appeal to the Eighth Circuit, and the United States has requested an expedited briefing schedule. *Avila v. Bondi*, No. 25-3248 (8th Cir.).

I. Standard of Review

Injunctive relief is "an extraordinary remedy never awarded as a right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008). A court may grant interim relief only if a movant shows: (1) he is likely to succeed on the merits, (2) he will suffer imminent, irreparable harm absent interim relief, (3) that harm outweighs the harm an injunction would cause other parties, and (4) the public interest favors interim relief. *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109, 113-14 (8th Cir. 1981) (en banc). The movant bears the burden of proof for each factor, *Gelco v. Coniston Partners*, 811 F.2d 414, 418 (8th Cir. 1987), "a heavy burden" and a "difficult task." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). The exacting burden is further heightened when a party seeks a mandatory preliminary injunction—one which "alters the status quo by commanding some positive act, as opposed to a prohibitory injunction seeking only to maintain the status quo." *TruStone Fin. Fed. Credit Union v. Fiserv, Inc.*, No. 14-CV-424 (SRN/SER), 2014 WL 12603061, at *1 (D. Minn. Feb. 24, 2014). "Mandatory preliminary injunctions are to be cautiously viewed and sparingly used." *Id.*

The United States also notes that a district court in California just today certified a class and issued an order finding 1226 applied to that class, rather than 1225. Order, *Bautista v. Santacruz, et al.*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025) (ECF 81) (certifying class); Order, *Bautista v. Santacruz, et al.*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025) (ECF 82) (granting partial summary judgment on 1225/1226 issues). Due to the timing of this Order, it is unclear whether this order will be immediately appealed and whether a stay will be requested and granted. The United States will update the Court as that information becomes available.

II. Threshold Issues

Before getting to the merits, there are two threshold issues to resolve. First, this Court lacks habeas jurisdiction to review Petitioner's detention because it arises from the government's decisions and actions to commence removal proceedings against him. Congress stripped federal courts of the power to review such decisions and actions, *see* 8 U.S.C. § 1252(g), and Petitioner's efforts to overcome the provision fail. Second, DHS, ICE, Mr. Margolin, and EOIR are not proper parties to this case. Petitioner included them solely for purposes of trying to obtain APA-style relief and an injunction against the entire Fort Snelling Immigration Court. *See* ECF 1 at 30, ¶ 6. That is improper, and the Court should dismiss DHS, ICE, Mr. Margolin, and EOIR no matter how it resolves the petition. The proper respondent in a habeas case is the "person who has custody over the petitioner." *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004). In this case, that person is Samuel Olson, ICE St. Paul Field Office Director, who will ensure proper implementation of any order of the Court, as he has done in other habeas cases before this Court.

A. Jurisdiction

This Court lacks jurisdiction over the habeas petition. Under § 1252(g), federal courts cannot review challenges—whether raised directly or roundaboutly—to the government's decision to commence removal proceedings against a noncitizen. Petitioner tires to get out in front of this issue, ECF 5, at 2-5, but none of his arguments are persuasive.

Congress has deprived courts of jurisdiction to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any

alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."[6] Thus, unless authorized in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021). Section 1252(g) also bars district courts from hearing challenges to the *method* by which the government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

This habeas petition stems from Petitioner's detention following a notice to appear that initiated removal proceedings. More precisely, Petitioner challenges ICE's choice to detain him pursuant to § 1225(b)(2) rather than § 1226. That puts this petition in the crosshairs of § 1252(g). As other courts recognize, detention under these circumstances necessarily arises "from [the] decision to commence expedited removal proceedings." *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007); *see also Wang v. United States*, 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Valencia-Mejia v. United States*, 2008 WL

[6] In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

4286979 (C.D. Cal. Sept. 15, 2008). Judge Magnuson recently acknowledged the rule as well, finding no jurisdiction to review a similar "1225/1226" habeas petition because the "[p]etitioner's removal proceedings commenced when he was issued a Notice to Appear in immigration court. By its plain terms, [§ 1252(g)] bars the Court from questioning ICE's discretionary decisions to commence removal and detain Petitioner during his removal proceedings." *S.Q.D.C. v. Bondi*, 2025 WL 2617973, at *2 (D. Minn. Sept. 9, 2025) (citations, alterations, and internal quotation marks omitted).

Petitioner asks the Court to ignore Congress's jurisdiction-stripping provisions because he "is not challenging any decision to commence proceedings." ECF 5, at 3. For support, Petitioner observes that removal proceedings are governed by § 1229 and his detention is governed by § 1225. His point seems to be that a decision or action made pursuant to one statute cannot possibly "arise out" of a decision or action made pursuant to a different statute. Yet § 1252(g) is not limited to blocking judicial review of decisions or actions made pursuant to the provisions of § 1229. The statute bars review of *all* decisions or actions to commence proceedings *under this chapter*—i.e., Chapter 12, which spans from 8 U.S.C. § 1101 to § 1537.

As explained above, Petitioner was served with a Notice to Appear that initiated removal proceedings against him. The notice explained that he was a noncitizen "present in the United States who has not been admitted or paroled." Ligon Decl. Ex. B. That is the exact category of noncitizen Congress deems to be an "applicant for admission" under § 1225. And Petitioner is being detained under § 1225(b)(2), while his removal proceedings are ongoing. Indeed, the express purpose of subsection (b)(2) is to detain applicants for

admission "***for a proceeding under section 1229a of this title***." (emphasis added) There is no detention under § 1225 without removal proceedings. *See Ali v. Sessions*, 2017 WL 6205789, at *2 (D. Minn. Dec. 7, 2017) ("Ali's claim clearly falls within the ambit of § 1252(g), as Ali's claim clearly "arises from" the Secretary's decision to "execute the removal order" by detaining Ali so that he can be removed to Somalia." (alterations omitted)). Petitioner's detention does "arise out of" the commencement of removal proceedings.

This petition does not present "a pure question of law." ECF 5 at 5. The Court need look no further than Petitioner's own filings in this case. Between his petition, brief, and supporting declaration, Petitioner has presented: (1) a narrative about his arrival in the country without admission or inspection and (2) observations about long-standing agency practices or interpretations of applicable statutes. The fact that there is no dispute as to the factual record in this case does not mean the question is purely legal. On balance, this case does not "present a habeas claim that raises a purely legal question of statutory construction," and § 1252(g)'s jurisdictional bar applies. *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017).

B. Proper Parties

Petitioner named DHS, ICE, Mr. Margolin, and EOIR as respondents for his habeas petition. Pet. ¶¶ 17-20. As to DHS, ICE, and EOIR, it was a mistake for Petitioner to include them because agencies are not people. "The federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is *the person* who has custody over the petitioner." *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (emphasis added) (citations,

alterations, and internal quotation marks omitted). In other words, habeas petitions must be brought against "'the person' with the ability to produce the prisoner's body before the habeas court." *Id.* For that reason, DHS, ICE, and EOIR are not proper parties to this case.

It was also a mistake for Petitioner to name General Bondi, Secretary Noem, and Daren Margolin as respondents. His only basis for doing so are allegations that these defendants have supervisory responsibility for the immigration court and its proceedings and or the institution of proceedings by ICE. ECF 1 ¶¶ 15, 16, 18. Supervisory authority does not matter; "the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld*, 542 U.S. at 435. These individuals are not proper parties to this case.

The reason Petitioner named such obviously improper respondents is clear from the face of the petition: he is trying to shoehorn APA claims into a habeas action. Petitioner does not even try to hide it. "Count Five" of the petition alleges that Respondents' "application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA." ECF 1 ¶ 97. The requested relief goes well beyond Petitioner's immediate detention; an APA lawsuit is entirely different and subject to different procedures.[7]

[7] Narrow habeas relief would be an adequate remedy for Petitioner's claims in this case. Whether a person is entitled to release from unlawful custody "fall[s] within the 'core' of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J. G. G.*, 604 U.S. 670, 672 (2025) (per curiam). And APA claims are unavailable where habeas relief presents an adequate alternative remedy. *Id.* at 674 (Kavanaugh, J., concurring).

This is not an APA case. Petitioner paid only a $5.00 filing fee, styled his initial pleading as a "petition," and did not go through the mechanisms for serving a summons and civil complaint pursuant to Federal Rule of Civil Procedure 4. The Court ordered Respondents to show the true cause and duration of Petitioner's detention, not prepare an administrative record of a final agency action upon which the parties could present cross-motions for summary judgment. ECF 3. It is black-letter law that habeas petitioners are limited to challenging the fact or duration of their confinement, not the conditions of that confinement or the agency policies governing it. *Spencer v. Haynes*, 774 F.3d 467, 469-71 (8th Cir. 2014); *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996). Thus, the Court cannot take up Petitioner's sweeping challenge to how federal agencies interpret and apply § 1225, how they adhere to BIA precedent, or how they make detention decisions as to other individuals.

Petitioner is not the first petitioner to include civil claims into a habeas action. But this Court consistently rejects such tactics. Just a few weeks ago, a report and recommendation in a different habeas case decried the practice as "Frankenstein pleading" that "unduly broadens the narrow scope of habeas corpus and combines proceedings with incompatible procedural rules." *Patel v. Noem*, No. 25-cv-3167 (ECT/DJF) (D. Minn. Sept. 12, 2025); *see also Canada v. Olmsted County Cmty. of Corrs*, 2022 WL 607482, at *8 (D. Minn. Mar. 2022) (citing District of Minnesota authority). Petitioner is free to file a new civil action to pursue broader APA claims, but they are not properly before the Court in a petition for a writ of habeas corpus. With those claims properly excluded from the

case, there is no reason to keep DHS, ICE, EOIR, General Bondi, Secretary Noem, or Mr. Margolin as parties.[8]

III. Petitioner's claims fail on the merits.

Turning to the merits, the Court should deny the habeas petition because Petitioner is not entitled to a bond hearing. A plain reading of the statutes at issue confirms that Petitioner is subject to mandatory detention under § 1225(b)(2). That is the only reading that comports with the intent behind deeming noncitizens who arrive without admission or inspection as "applicants for admission. *See* 8 U.S.C. § 1225(a)(1).

A. Petitioner's Detention

The Court should reject Petitioner's request to convert his § 1225(b)(2) detention into § 1226(a) detention. Regardless of what Petitioner argues, he is an "applicant for admission" and is therefore "seeking admission," *see* ECF 1 ¶ 14. Congress deemed him to be an "applicant for admission" through § 1225(a)(1). His own allegations confirm that he meets the definition, as he is a noncitizen "present in the United States who has not been admitted." *See* ECF 1 ¶¶ 32-34 ("[Petitioner] is a native and citizen of Mexico . . . [who] entered the United States without inspection" and "did not have contact with immigration authorities upon entering the United States"). Under § 1225(b)(2), a noncitizen who is an applicant for admission and not subject to (b)(1) must be detained during removal proceedings.

[8] Judge Menendez recently declined to address APA claims in a habeas petition similar to this one as it would be "premature" to set aside the agency's practice and declare that it violated the APA. Order, *Belsai D.S. v. Bondi, et al.*, No. 25-cv-3682 (KMM-EMB) at 13 n.5 (D. Minn. Oct. 1, 2025) (ECF 14).

Petitioner wants to short circuit this analysis by shifting the Court's focus to the phrase "seeking admission," in § 1225(b)(2):

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien <u>seeking admission</u> is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

His argument is that a noncitizen who is an "applicant for admission" must ***also*** be seeking admission before the mandatory detention provisions of § 1225(b)(2) are triggered. *See* ECF 5 at 11-16. Part and parcel with this argument is Petitioner's passing assertion that ***all*** detention under § 1225(b)—whether pursuant to (b)(1) or (b)(2)—is appropriate only for noncitizens who arrive at the border or who recently arrived at the border. *See id*; *see also* ECF 5 at 17-18. Put differently, Petitioner asserts there is no mandatory detention for a noncitizen who is an "applicant for admission" unless that person is arriving and seeking admission at the time he encounters an immigration officer. Basic canons of interpretation foreclose Petitioner's reading of § 1225.

First, there is the plain text and meaning of the provisions at issue. Under § 1225(a)(1), an "applicant for admission" includes any noncitizen "present in the United States who has not been admitted or who arrives in the United States." Noncitizens who have been in the country for years fit within the first part of that definition, while noncitizens who appear at the border fit within the second part. Right away, that dooms Petitioner's suggestion that § 1225 governs only arriving noncitizens.

His emphasis on "seeking admission" fares no better. Section 1225(b)(2) does not create two subclasses of applicants for admission—one comprised of noncitizens who are

seeking admission, and one comprise of noncitizens who aren't seeking admission. The phrases are merely two ways to say the same thing. Indeed, Congress took a similar approach in § 1225(a)(3), requiring inspection for all noncitizens "who are applicants for admission or otherwise seeking admission." Congress understood that being an applicant for admission is a way of "otherwise seeking admission," and Congress required all noncitizens seeking admission (whether as applicants for admission or "otherwise") to be inspected under §1225(a)(5). To put this back into the context of § 1225(b)(2), Congress mandated detention for noncitizens who are applicants for admission (and thus, "seeking admission") if an immigration officer determines they are not clearly and beyond a doubt entitled to be admitted.

Petitioner obfuscates the issue by asserting that § 1225(b) applies only "to those arriving at or near the border." ECF 5 at 21. Detention under § 1225(b)(2) has nothing to do with whether a noncitizen is arriving; the trigger is "in the case of an [noncitizen] who is an ***applicant for admission***." 8 U.S.C. § 1225(b)(2) (emphasis added). And as explained above, Congress deemed noncitizens present in the United States without admission to be "applicants for admission," choosing not to limit the definition to only arriving noncitizens. *Id.* § 1225(a)(1).

Second, there is the overall statutory structure. According to the Supreme Court, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. The second category "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Id.* This structure makes sense

in the context of § 1225(b)'s detention provisions—(b)(1) applies to "arriving" or recently arrived noncitizens who must be detained pending *expedited* removal proceedings, and (b)(2) applies to all applicants who must be detained for a *non-expedited* removal proceeding under § 1229a. There is no third category of applicants for admission as Petitioner suggests. Adopting his self-serving requirement that detention under (b)(2) is available only for arriving noncitizens who also seek admission would render the provision redundant to (b)(1).

Third, the mandatory detention provisions of § 1225 are more targeted than the discretionary detention provisions of § 1226. "A basic canon of statutory construction" is that "a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter." *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024). Section 1226(a) applies to noncitizens "arrested and detained pending a decision" on removal. The statute says nothing about detaining applicants for admission. That is the role § 1225(b) plays, by addressing detention for a narrower and specially defined category of noncitizens who are applicants for admission. that includes those "present in the United States who ha[ve] not be admitted." *See* 8 U.S.C. § 1225(a)(1); *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of [noncitizens] as 'applicants for admission,' and § 1225(b) mandates detention of these [noncitizens] throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of [noncitizens] pending removal is discretionary unless the [noncitizen] is a criminal [noncitizen].").

A recent decision out of the Eastern District of Louisiana rejects this argument, outright, explaining that there are many categories of immigrants to whom § 1226(a) would apply. *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *5 (W.D. La. Oct. 31, 2025). The court in *Sandoval* cited back to one of the petitioners in the Supreme Court's *Jennings* decision, who was a lawful permanent resident, but later became removable because of a criminal conviction. The court further explained that in *Jennings*, the Supreme Court did not find 1225 and 1226 to be mutually exclusive; rather the petitioner there was subject to 1225(b)(2), even though that statute "primarily" applied to immigrants arriving at the border . *Id.* Because Petitioner falls within the specific detention authority of § 1225(b), the Court should not adopt a statutory construction that forces him over into the more general provisions of § 1226(a).[9]

Petitioner's reading of the statues at issue is not correct. And this Court would not be the first tribunal to reach that conclusion. On September 30, 2025, a Nebraska judge declined to find a conflict between section 1225 and 1226, finding that the fact that they may overlap does not mean 1226 must apply to the petitioner. The Court found that the petitioner was properly within the category of individuals to whom 1225(b)(2) applied, and

[9] Petitioner points to the recently enacted mandatory detention provisions in § 1226(c), arguing that those recent changes would be superfluous under Respondents' interpretation of § 1225(b). ECF 5 at 23 (citing 8 U.S.C. § 1226(c)(1)(E)). But that provision requires mandatory detention for noncitizens who are charged with, arrested for, or convicted of particular crimes—circumstances not present here. This provision cannot shrink the scope of mandatory detention under an altogether different statute.

thus, he was subject to mandatory detention. The same is true here.. *Lopez v. Trump, et al.,* No. 8:25CV526, 2025 WL 2780351, at *7 (D. Neb. Sept. 30, 2025).[10]

A federal district court in Massachusetts recently confirmed that a noncitizen, unlawfully present in the country for approximately 20 years, was nonetheless an "applicant for admission." *See Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025). The *Pena* court explained that this resulted in the "continued detention" of a noncitizen during removal proceedings as commanded by statute. *Id.* Petitioner brushes off *Pena* with a single sentence saying that the judge in that case "failed to account for the statutory language." ECF 5 at 11. The statutory language is clear and does not require the analysis Petitioner proposes in this case:

> The authority of ICE to detain aliens who are present in the country unlawfully derives from 8 U.S.C. §1225. That statute authorizes the detention of any alien who 1) is "an applicant for admission" to the country and 2) is "not clearly and beyond doubt entitled to be admitted." An alien is an "applicant for admission" if he has arrived to or is present in the country but has not yet been lawfully granted admission.

Pena, 2025 WL 2108913, at *1 (citations omitted).

The BIA has likewise recognized for decades that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are

[10] Chief Judge Rossiter of Nebraska took a different approach. *Mina v. TRUMP, et al*, No. 8:25CV583, 2025 WL 3141178, at *8 (D. Neb. Nov. 10, 2025). There, the court assumed without deciding, that Petitioner was correct and was detained under 1226(a). Through an extensive analysis under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the court found that Petitioner's due process had not been denied. This Court could similarly find that Petitioner's detention has not been prolonged and does not violate due process rights, because it is reasonably related to the purpose of the detention – ensuring the Petitioner is present for immigration proceedings that move quickly and efficiently.

nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). In fact, the BIA issued a decision just a few weeks ago directly addressing the issues that Petitioner raises. *See In re Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). That decision adopts the government's interpretation of § 1225(b)(2), which is persuasive authority to guide this Court's review given the BIA's expertise in immigration law. *Sandoval*, 2025 WL 3048926, at *6.

B. Congressional Intent

When the plain text of a statute is clear, that meaning is controlling and courts "need not examine legislative history." *Doe v. Dep't of Veterans Affs. of U.S.*, 519 F.3d 456, 461 (8th Cir. 2008). Indeed, "in interpreting a statute a court should always turn first to one, cardinal canon before all others." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Supreme Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* (citations omitted). Thus, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

Even if legislative history is relevant, nothing within it "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Indeed, the legislative history and evidence regarding the purpose of § 1225(b)(2) show that Congress did not mean to treat noncitizens arriving at ports of entry worse than those who successfully enter the nation's interior without inspection. Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the

United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended to replace certain aspects of the [then-]current 'entry doctrine,' under which illegal [noncitizens] who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to [noncitizens] who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

Petitioner asks this Court for a statutory interpretation that ignores Congress's goal. His construction means that noncitizens like him who "crossed the border unlawfully" are in a better position than those who follow the rules and "present themselves for inspection at a port of entry." *Id.* This cannot be the law. Rather, through the adoption of 1225(a)(1), Congress sought to "ensure that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission.'" *Sandoval*, 2025 WL 3048926 at *6 (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). Accepting Petitioner's position means that noncitizens who present at ports of entry are subject to mandatory detention under § 1225, while those who evade detection and cross without inspection are rewarded with eligibility for a bond under § 1226(a).

C. Prior Agency Practices

That leaves Petitioner's complaint that prior agency practices were different. *See, e.g.*, ECF 1 ¶ 59; ECF 5 at 25. But prior practices carry little weight under *Loper Bright*. The weight given to agency interpretations "must always 'depend upon their thoroughness,

the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 432-33 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis to support its reasoning. *See* 62 Fed. Reg. at 10323; *see also Maldonado v. Bostock*, 2023 WL 5804021, at *3, 4 (W.D. Wash. Aug. 8, 2023) (noting the agency provided "no authority" to support its reading of the statute).

"[W]hen the best reading of the statute is that it delegates discretionary authority to an agency," the Court must "independently interpret the statute and effectuate the will of Congress." *Loper Bright*, 603 U.S. at 395 (cleaned up). Here, "read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297 (cleaned up).

III. The remaining *Dataphase* factors do not support a temporary restraining order.

This Court should deny Petitioner's motion and petition because he has not established sufficient irreparable harm, and the public interest and balance of the equities favor the United States' position. As a threshold matter, the Court need not even reach these factors, given Petitioner's failure to show a likelihood of success on the merits of his claim. *See Devisme v. City of Duluth*, No. 21-CV-1195 (WMW/LIB), 2022 WL 507391, at *4 (D. Minn. Feb. 18, 2022) ("Because Devisme has not demonstrated a likelihood of success on the merits, the Court need not address the remaining *Dataphase* factors."). But even if the Court were to consider the other factors, Petitioner's claim fails.

A. Irreparable Harm

Regardless of the merits his or her claims, a plaintiff must show "that irreparable injury is likely in the absence of an injunction." *Singh v. Carter*, 185 F. Supp. 3d 11, 20 (D.D.C. 2016). To be considered "irreparable," a plaintiff must show that absent granting the preliminary relief, the injury will be "'both certain and great,' 'actual and not theoretical,' 'beyond remediation,' and 'of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.'" *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). The significance of the alleged harm is also relevant to a court's determination of whether to grant injunctive relief. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982) ("[A] federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law."); *E.B. v. Dep't of State*, 422 F. Supp. 3d 81, 88 (D.D.C. 2019) ("While 'there is some appeal to the proposition that any damage, however slight, which cannot be made whole at a later time, should justify injunctive relief,' the Court cannot ignore that 'some concept of magnitude of injury is implicit in the [preliminary injunction] standards.'") (quoting *Gulf Oil Corp. v. Dep't of Energy*, 514 F. Supp. 1019, 1026 (D.D.C. 1981)).

Petitioner cites the potential negative consequences of being further from his counsel as a basis for irreparable harm. ECF 5 at 8. Petitioner is not subject to such a proposed move, and ICE does not contest this Court's jurisdiction to order habeas relief, even if Petitioner is moved. To the extent Petitioner relies on the fact of detention in support of his argument regarding irreparable harm, *id.,* Respondents note that it is

mandatory under the statute for the duration of removal proceedings. Detention is not indefinite, particularly during the time period in which it is under review at the BIA.

B. Public Interest, Balance of the Equities

The two remaining *Dataphase* factors—the public interest and the balance of harms—also weigh against injunctive relief. "For practical purposes, these factors 'merge' when a plaintiff seeks injunctive relief against the government." *Let Them Play MN v. Walz*, 517 F. Supp. 3d 870, 888 (D. Minn. 2021).

Under the balance of harms factor, "[t]he goal is to assess the harm the movant would suffer absent an injunction, as well as the harm other interested parties and the public would experience if the injunction issued." *Katch, LLC v. Sweetser*, 143 F. Supp. 3d 854, 875 (D. Minn. 2015) (citing *Pottgen v. Missouri State High Sch. Activities Ass'n*, 40 F.3d 926, 928 (8th Cir. 1994)). When balancing the harms, courts will also consider whether a proposed injunction would alter the status quo, finding that such proposals weigh against injunctive relief. *See, e.g., Katch, LLC*, 143 F. Supp. 3d at 875; *Amigo Gift Ass'n v. Exec. Props., Ltd.*, 588 F. Supp. 654, 660 (W.D. Mo. 1984) ("[B]ecause Amigo is not seeking the mere preservation of the status quo but rather is asking the Court to drastically alter the status quo pending a resolution of the merits, the Court finds that the balance of the equities tips decidedly in favor of Executive Properties.").

Importantly, the Court must take into consideration the public consequences of injunctive relief against the government. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008) (cautioning that the Court "should pay particular regard for the public consequences" of

injunctive relief). The government has a compelling interest in the steady enforcement of its immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a "broad change" in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) ("the public interest in the United States' enforcement of its immigration laws is high"); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) ("the Government's interest in enforcing immigration laws is enormous.").

Judicial intervention would only disrupt the status quo. *See, e.g.*, *Slaughter v. White*, No. C16-1067-RSM-JPD, 2017 WL 7360411, at * 2 (W.D. Wash. Nov. 2, 2017) ("[T]he purpose of a preliminary injunction is to preserve the status quo pending a determination on the merits."). The Court should avoid a path that "inject[s] a degree of uncertainty" in the process. *USA Farm Labor, Inc. v. Su*, 694 F. Supp. 3d 693, 714 (W.D.N.C. 2023). The BIA exists to resolve disputes like the one regarding Petitioner's detention. *See* 8 C.F.R. § 1003.1(d)(1). By regulation it must "provide clear and uniform guidance" "through precedent decisions" to "DHS [and] immigration judges." *Id.* Respondents respectfully ask that the Court allow the established process to continue without disruption.

The Court should deny the motion and dismiss the Petition. The United States does not believe that any hearing is necessary on the motion or Petition.

CONCLUSION

For the foregoing reasons, the Court should dismiss the petition for lack of jurisdiction or deny it on the merits. The Court should also dismiss the agencies and individuals improperly named as respondents to this case, decline Petitioner's invitation to issue improper class-wide or APA-style relief, and deny his motion for a temporary restraining order.

Dated: November 24, 2025

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